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7 Attorneys for: Plaintiff Regan Carroll Trust

8 UNITED STATES DISTRICT COURT  
9  
10 NORTHERN DISTRICT OF CALIFORNIA  
11  
12 SAN FRANCISCO

10	REGAN CARROLL TRUST, Regan	)	ACTION NO: C-07-2577 SBA
11	Carroll, trustee,	)	
12	Plaintiff,	)	FIRST AMENDED COMPLAINT
13	v.	)	FOR INJUNCTIVE RELIEF AND
14		)	DAMAGES FOR VIOLATION OF
15	CITY AND COUNTY OF SAN	)	CIVIL RIGHTS
16	FRANCISCO, SAN FRANCISCO	)	
17	DEPARTMENT OF BUILDING	)	[28 U.S.C. § 1983]
18	INSPECTION, SAN FRANCISCO	)	
19	BUILDING INSPECTION	)	DEMAND FOR JURY TRIAL
20	COMMISSION, SAN FRANCISCO	)	
21	PLANNING DEPARTMENT	)	
22	Defendants.	)	
23		)	
24		)	
25		)	
26		)	
27		)	
28		)	

JURISDICTION AND VENUE

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2 1. This Court has jurisdiction over this action pursuant to 28 U.S.C. §§  
3 1331, in that the controversy arises under the United States Constitution and under 42  
4 U.S.C. §§ 1983. Venue is proper pursuant to 28 U.S.C. § 1391(a) in that all defendants  
5 reside in this judicial district and the events giving rise to the claims occurred in this  
6 district.

7  
8 2. Plaintiff Regan Carroll Trust is a private trust established in the state of  
9 California. Regan Carroll is its trustee.

10 3. Regan Carroll Trust owns the real property located at 1179-1189  
11 Tennessee Street (the "Property"), in San Francisco, California.

12 4. Defendant City and County of San Francisco ("City") is  
13 an incorporated municipality of the State of California. Defendants San Francisco  
14 Department of Building Inspection ("DBI"), San Francisco Building Inspection  
15 Commission ("BIC"), and San Francisco Planning Department ("Planning") are  
16 divisions of defendant City.

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18  
19 STATEMENT OF FACTS

20 5. In or around March 2000, Plaintiff succeeded to a building permit  
21 application to the City for a four- story mixed use commercial/residential building  
22 ("Project") on the Property, BPA No. 9902819 ("Application"). Plaintiff's  
23 predecessor-in-interest had been directed by Planning to review the project with the  
24 Dogpatch Neighborhood Association ("DNA") to obtain the review of and approval  
25 for the Project because Planning had ceded and delegated its governmental authority  
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28



1 to that private body.<sup>1</sup> This delegation of power is similar to that in Schulz v.  
2 Milne (N.D. Cal. 1994) 849 F.Supp. 708 in which this Court found the City's  
3 delegation of land use power to another San Francisco neighborhood group (Bernal  
4 Heights, not far from Dogpatch) violated the United States Constitution. Upon  
5 succeeding to the Application, Plaintiff also met with DNA for the purpose of  
6 obtaining its approval.  
7

8 6. Planning refused to determine whether the Application was complete  
9 unless DNA approved it. However, because DNA would neither approve nor  
10 disapprove the Application, Plaintiff had to insist Planning do its job.  
11

12 7. The Application was finally determined to be complete by Planning  
13 in June 2001. After the Application was deemed complete, Planning caused a notice  
14 to be posted and mailed in accordance with Section 311 of the Planning Code  
15 commencing the 30 day appeal period. DNA made no objections during the  
16 Planning Commission comment period that expired on July 26, 2001. Planning  
17 approved the Application on August 7, 2001. Planning approved the site permit on  
18 September 10, 2002. This constituted the end of the discretionary approval process.  
19

20 8. During the next three years the addenda drawings were routed to  
21 various departments of the City for ministerial review and approval, revisions were  
22 made, and all necessary approvals were given. Having received all approvals, the  
23 Central Permit Bureau ("CPB") sent Plaintiff a notice that the permit was ready to be  
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27 <sup>1</sup> Dogpatch is a little-known, but powerful and politically-connected neighborhood on  
28 the eastern side of San Francisco.

1 picked up subject only to the condition of payment of school facilities fee.

2 9. Upon presentation of the certificate of payment for the school facilities  
3 fee, CPB had a mandatory duty to deliver the permit to Plaintiff.

4 10. On December 2, 2005, Plaintiff presented the Certificate of Payment  
5 of School Facility Fees ("Certificate") issued by the San Francisco Unified School  
6 District evidencing his payment of school fees of \$20,282.36 to the CPB, but was  
7 advised by the CPB staff that the permit and addenda drawings had been removed  
8 from the CPB by Moses Corrette of Planning after business hours and he would have  
9 to speak with Corrette. Plaintiff was not told the circumstances of or the authority  
10 under which Corrette allegedly removed the drawings, but believes it to be under  
11 mysterious and aberrant circumstances – Corrette was not the planner assigned to  
12 the Project, had not been involved in the approval process, and removed the  
13 drawings from CPB after being contacted by a member of DNA.

14 11. Corrette had been intimately involved with DNA and its members  
15 during the process that ultimately resulted in the creation of the Dogpatch Planning  
16 Historical District.

17 12. The Certificate was not accepted and the permit was not delivered to  
18 Plaintiff as promised and as required upon receipt of proof of payment of the school  
19 facility fees.

20 13. The action by Corrette was in excess of his own authority as a planner  
21 not involved in the project approval process. It was also in excess of the power of the  
22 Planning Department itself.



1           14. Plaintiff discovered that the mysterious and aberrant circumstances  
2 consisted of ex parte contacts and undue influence by certain members of the DNA  
3 on public officials, and more particularly on Corrette. Unbeknownst to Plaintiff, the  
4 permit and addenda drawings were removed from CPB late at night, in a manner  
5 reminiscent of Watergate, and taken back to Planning. Plaintiff was never notified of  
6 Moses Corrette's action, although this occurred several weeks prior to the  
7 presentation of the Certificate by Plaintiff. CPB's refusal to deliver the permit to  
8 Plaintiff upon proof of payment of the school facilities fees was in excess of its  
9 jurisdiction and in violation of its ministerial duty as DBI had no discretion  
10 regarding the delivery of the permit.  
11

12  
13           15. Contrary to Plaintiff's vested right to the permit, DBI and Planning  
14 contrived various meritless reasons for withholding it, including non-substantive  
15 changes to the Planning Code enacted after Plaintiff's right vested. They engaged in  
16 unreasonable, arbitrary, and capricious conduct, without any rational basis, and  
17 singled Plaintiff out for special handling by order of DNA as a result of the power the  
18 City had unlawfully delegated to it.  
19

20                           COUNT ONE AGAINST ALL DEFENDANTS  
21                           VIOLATION OF 42. U.S.C. § 1983 BY  
22                           UNLAWFUL DELEGATION OF POWER

23           16. Plaintiff incorporates by reference paragraphs 1-15.

24           17. Defendants have de facto delegated municipal regulatory decision-  
25 making authority to a private entity – DNA – in violation of the due process clause of  
26 the Fourteenth Amendment to the United States Constitution. As a result, DNA has  
27

1 acted under the color of state law and there is such a nexus between Defendants and  
2 DNA that the action of the DNA can be considered and treated as the actions of  
3 Defendants.

4 18. Furthermore, this delegation of power to DNA was done without  
5 supplying standards to govern the use of private discretion. DNA wields his  
6 influence against those it disfavors and for those it favors.

7 19. Defendants act as a rubber stamp for the decisions and demands of  
8 DNA, thus constituting an unlawful delegation of power to the detriment and harm  
9 of Plaintiff because he is disfavored by DNA. Had Defendants not delegated their  
10 power to DNA, his status as being disfavored by DNA would not have affected his  
11 right to permit issuance.

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13  
14 COUNT TWO AGAINST ALL DEFENDANTS  
15 VIOLATION OF 42. U.S.C. § 1983  
16 BY VIOLATION OF EQUAL PROTECTION

17 20. Plaintiff incorporates by reference paragraphs 1-15.

18 21. Defendants' delegation of governmental power to DNA is irrational,  
19 arbitrary and capricious.

20 22. Any proffered rational basis by Defendants for their conduct is a  
21 pretext.

22 23. DNA used the delegation of power to abuse Plaintiff's rights to due  
23 process of the law in his permit application. The City knew or should have known  
24 that DNA would abuse the power delegated to it by the City and would not act in  
25 accordance with standards that would have been applicable to the City.  
26  
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28



1           24. By unlawfully delegating City power to DNA, without standards or  
2 oversight, Defendants have deprived Plaintiff of the equal protection of the law in  
3 violation of the Fourteenth Amendment to the United States Constitution.

4                           COUNT THREE AGAINST ALL DEFENDANTS  
5                           VIOLATION OF U.S. CONSTITUTION, AMENDMENT I  
6                           RETALIATION FOR EXERCISING FIRST AMENDMENT RIGHT

7           25. Plaintiff incorporates by reference paragraphs 1-15.

8           26. Plaintiff engaged in a protected First Amendment activity by filing this  
9 action and other state court actions against Defendants.

10           27. Plaintiff is informed and believes and thereon alleges that Defendants,  
11 in retaliation for Plaintiff filing this action and other actions against Defendants in  
12 state court, are intentionally delaying and continue to delay the processing of the  
13 Application for this Project as well as are intentionally delaying and continue to delay  
14 the processing of matters related to other real property owned by Plaintiff.

15           28. Plaintiff is further informed and believes and thereon alleges that the  
16 delays in processing of the Application for this Project and other matters related to  
17 other real property owned by Plaintiff would not have occurred had Plaintiff not filed  
18 this action and/or the state court actions.

19                           PRAYER

20                           By reason of the foregoing acts, the Plaintiff prays the Court:

21           1. Enjoin the unlawful acts of the Defendants, specifically:

22                           a. To enjoin the Defendants from unlawfully delegating their  
23 authority to DNA or anyone else;  
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1                   b.     To enjoin the Defendants from refusing to issue qualified  
2 permits;

3                   2.     For an award of damages in the amount of \$5,000,000;

4                   3.     For an award of attorney's fees as allowed by law; and

5                   4.     For any other relief that the Court deems just and proper.

6  
7 Date: October 30, 2007

ZACKS UTRECHT & LEADBETTER, P.C.  
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San Francisco, CA 94104

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9  
10 By: 

11 ANDREW M. ZACKS  
12 Attorneys for Plaintiff  
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14 DEMAND FOR JURY TRIAL

15 Plaintiff hereby demands trial by jury.

16  
17 Date: October 30, 2007

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19  
20 By: 

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